UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE

MONTAUK STUDENT TRANSPORT, LLC

and **Case 02-CA-174131**
02-CA-177974
THE TRANSPORT WORKERS UNION OF GREATER NEW YORK, LOCAL 100 **02-CA-184618**

Nicholas Rowe, *Esq.,* for the General Counsel
Samuel Jackson, *Esq.*, for the Union
Clifford Chaiet, *Esq.*, for the Respondent

DECISION AND ORDER

Statement of the Case

BENJAMIN W. GREEN, Administrative Law Judge. The General Counsel seeks a default judgment in this case on the ground that Respondent Montauk Student Transport, LLC has withdrawn its answer to the complaint. The Union, The Transport Workers Union of Greater New York, Local 100, filed a charge and first amended charge in case 02-CA-174131 on April 14, 2016 and September 12, 2016, respectively, a charge in case 02-CA-177974 on June 9, 2016, and a charge and first amended charge in case 02-CA-184618 on September 9, 2016 and November 4, 2016, respectively. Upon these charges, the Regional Director of Region 2 issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing on July 31, 2017 alleging that Respondent violated Section 8(a)(5), (3) and (1) of the National Labor Relations Act (the Act). Respondent filed an answer on August 10, 2017.

On November 27, 2017, the record opened by telephone. The General Counsel moved without objection to amend paragraphs 5(a) and 7(a) of the complaint. Respondent moved without objection to withdraw its answer to the complaint. I granted both motions. The General Counsel moved for default judgment and the parties waived the right to file briefs.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively states that unless an answer is received on or before August 13, 2017, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Although Respondent timely filed an answer on August 10, 2017, it later withdrew that answer. The withdrawal of an answer has the same effect as failure to file an answer, i.e., the allegations in the complaint must be considered to be admitted as true.[1] Accordingly, based on the

[1] See *Maislin Transport Of Delaware, Inc.*, 274 NLRB 529 (1985).

withdrawal of Respondent's answer, I deem the allegations of the complaint to be admitted as true, and I will grant the General Counsel's Motion for Default Judgment.

On the entire record, I make the following

Findings of Facts

I. Jurisdiction

At all material times, Respondent has been a New York State limited liability company with an office and principal place of business located in Medford, New York, and former places of business located in the Bronx, New York (Bronx Facility) and in Ardsley, New York. Respondent is engaged in the business of providing student transportation services under contract with school districts in the State of New York, including the New York City Department of Education and the BEPT Consortium School Districts in Westchester County, New York.

Annually, in the course and conduct of its business operations, Respondent derives gross revenues in excess of $250,000 and purchases and receives goods and supplies valued in excess of $5,000 directly from businesses located within the State of New York, each of which receives said materials and supplies directly from sources located outside the State of New York.

I find that Respondent has been, at all material times, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. The Unit and the Union's Representative Status

The following employees of Respondent constitute a unit (the Unit) appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act: All full-time and regular part time drivers and monitors at 399 Exterior Street, Bronx, New York.

Since about September 8, 2015, at all material times, Respondent has recognized the Union as the exclusive collective-bargaining representative of the Unit. This recognition has been embodied in a recognition agreement dated September 8, 2015. At all times since September 8, 2015, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

III. Supervisory Status of John Mensch

At all material times, John Mensch held the position of Respondent's owner, and has been a supervisor of Respondent within the meaning of Section 2(11) of the Act, and an agent of Respondent within the meaning of Section 2(13) of the Act.

IV. Alleged Unfair Labor Practices

The following events occurred, giving rise to this proceeding.

1. In about February and March 2016, Respondent, by John Mensch, at meetings in the Bronx Facility, promised its employees to restore the Monthly, Holiday, and Year End Incentive Attendance Bonuses if employees decertified the Union.

2. (a) Since March 16, 2016 and continuing thereafter, Respondent eliminated and has refused to pay the Monthly, Holiday Incentive, and Year End Incentive Attendance Bonuses for all Unit employees.

(b) Respondent engaged in the conduct described above in paragraph 2(a) because the employees of Respondent joined the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

3. (a) On about May 23, 2016 and November 1, 2016, the Union requested that Respondent furnish the Union with the following information: any relevant paperwork concerning the terminations of employees Mayra Gonzalez, Zulma Irizarry, Mary Latorre, Sonia Lino, Angel Rios, and Johnny Taylor; and a list of suspensions, warnings, or any other level of discipline Respondent implemented since in or around September 2015.

(b) The information requested by the Union, as described above in paragraph 3(a), is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

(c) Since about May 23, 2016 and November 1, 2016, Respondent has failed and refused to furnish the Union with the information requested by it as described above in paragraph 3(a).

Conclusions of Law

By the conduct described above in paragraph 1, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

By the conduct described above in paragraphs 2, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(3) and (1) of the Act.

By the conduct described above in paragraph 3, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(5) and (1) of the Act.

Respondent's unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

The Remedy

Having found that Respondent has engaged in certain unfair labor practices, I will order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. With respect to Respondent's elimination and refusal to pay the Monthly, Holiday Incentive, and Year End Incentive Attendance Bonuses, Respondent shall make Unit employees whole for any loss of earnings attributable to its unlawful conduct. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Further, having found that Respondent violated the Act by failing and refusing to provide the Union with information that is necessary and relevant to its role as the exclusive collective-bargaining representative of the Unit employees, I shall order Respondent to furnish the Union with the information it requested on May 23, 2016 and November 1, 2016.

Order[2]

Respondent Montauk Student Transport, LLC, its officers, agents, successors and assigns, shall

1. Cease and desist from

(a) Promising its employees to restore the Monthly, Holiday, and Year End Incentive Attendance Bonuses if employees decertified the Union, The Transport Workers Union of Greater New York, Local 100.

(b) Eliminating and refusing to pay the Monthly, Holiday Incentive, and Year End Incentive Attendance Bonuses for all Unit employees in order to discourage union activity.

(c) Failing or refusing to provide the Union with information that is relevant and necessary to the Union's role as the exclusive collective-bargaining representative of Unit employees.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make all affected employees whole, with interest, in the manner set forth in the remedy section of this decision, for any loss of earnings resulting from Respondent's unlawful elimination and refusal to pay the Monthly, Holiday, and Year End Incentive Attendance Bonuses.

(b) Furnish the Union with the information it requested on May 23, 2016 and November 1, 2016.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at facilities where Unit employees are employed or employed out of, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the

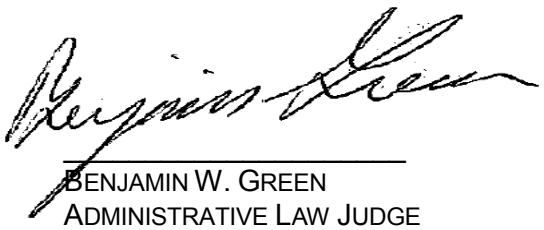
[2] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notices reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Regional Director for Region 2, after being signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If Respondent has gone out of business or closed any of the facilities involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all 15 current employees and former employees employed by Respondent at the closed facilities any time since February 1, 2016.

(e) Within 21 days after service by the Region, file with the Regional Director for Region 2 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

Dated November 30, 2017
New York, N.Y.



BENJAMIN W. GREEN
ADMINISTRATIVE LAW JUDGE

APPENDIX
Notice To Employees
Posted by Order of the National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT promise to restore the Monthly, Holiday, and Year End Incentive Attendance Bonuses if employees decertified the Union, The Transport Workers Union of Greater New York, Local 100.

WE WILL NOT eliminate and refuse to pay the Monthly, Holiday Incentive, and Year End Incentive Attendance Bonuses in order to discourage union activity.

WE WILL NOT fail and refuse to furnish the Union with information that is relevant and necessary to its role as the exclusive collective-bargaining representative of unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed by Section 7 of the Act.

WE WILL make employees whole, with interest, for any loss of earnings resulting from our elimination and refusal to pay the Monthly, Holiday Incentive, and Year End Incentive Attendance Bonuses.

WE WILL furnish the Union with information it requested on May 23, 2016 and November 1, 2016.

MONTAUK STUDENT TRANSPORT, LLC
(Employer)

Dated _____ **By** _____
(Representative) **(Title)**

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov

26 Federal Plaza, Room 3614, New York, NY 10278-0104
(212) 264-0300, Hours: 8:45 a.m. to 5:15 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/02-CA-174131 or by using the QR code below.

Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (212) 264-0344.